complaint. A complainant is responsible for the complaint he actually makes and for such action thereon as may be lawful and proper in view of it. *Boeger* v. *Langenberg* (1888) 97 Mo. 390, 395. But the complainant has no control over the justice; he merely calls upon the magistrate to exercise his jurisdiction, *Brown* v. *Chapman*, 60 Eng. Com. Law 364, and the action of the judge is the result of the judicial operation of his mind. *Cooper* v. *Harding* (1845) 7 Q. B. 928. The discretionary act of the magistrate is not the complainant's act, and if that act is unwarranted the complainant is not liable for it in an action for false imprisonment, whether the original arrest was lawful or unlawful. *Holtum* v. *Lotun* (1834) 6 Car. & P. 726; *Lock* v. *Ashton* (1848) 12 Q. B. 871; *Newman* v. *Railroad Co.* (1889) 54 Hun, 335. If, however, a complainant instigates a magistrate to do an act which is not justified, it is held to be not the independent act of the justice, and the complainant is liable. *Curry* v. *Pringle* (N. Y. 1814) 11 Johns. 444. What constitutes instigation is a difficult question; *Boeger* v. *Langenberg*, supra; *Cooper* v. *Harding*, supra; but it is settled that merely filing a complaint is not such instigation, *Langford* v. *Railroad Co.* (1887) 144 Mass. 431, and it does not appear that in the principal case the defendant did more than this. Whatever influence might be used to induce a police officer to take a person into custody, it would seem that there should be no liability for the magistrate's act unless that too was directly influenced by the complainant.

Resulting Trusts Under Fraudulent Conveyances.— The courts have always construed very liberally the statutes against fraudulent conveyances. By these statutes conveyances in fraud of "creditors and others" are declared void, but as between the parties they are held to be valid, either when the debtor himself conveys or when he pays the consideration and has the conveyance run to some one else; in either case no trust results; *Proseus* v. *McIntyre* (1848) 5 Barb. 424; *Stephens* v. *Heirs of Harrow* (1868) 26 Iowa 458; nor under like circumstances will equity enforce an express trust. *Sweet* v. *Tinslar* (1867) 52 Barb. 271. By analogy the courts have worked out the same results in cases where the conveyance is made to defeat the purposes of a statute. *Leggett* v. *Dubois* (N. Y. 1835) 5 Paige Ch. 114; *Redington* v. *Redington* (Ireland 1794) 3 Ridgeway 106; *Miller* v. *Davis* (1874) 50 Mo. 572; *Dewhurst* v. *Wright* (1892) 29 Fla. 223.

In the light of these principles a recent decision in Vermont seems surprising. The plaintiff lent money and took a mortgage running to his son, in order to defeat taxation. When the mortgage became due the property was deeded to the son in lieu of payment. In an action by the father against the son the court held that the son should convey the land to his father, saying that the son held it in a resulting trust. *Monahan* v. *Monahan* (1904) 59 Atl. 168. It seems clear that inasmuch as the transaction was fraudulent within the terms of the statute, and was also intended to defeat the public policy of the State, *Cox* v. *Wightman* (1875) reported in *Nichols* v. *Machine Co.* (1882) 27 Hun 202, the court should have been governed by the cases above. Its decision is put on the narrow ground that when

the plaintiff is not required to make out his own fraud he may have relief. But when a parent pays the consideration for property conveyed to a child the presumption is that the child takes beneficially, *Christy* v. *Courtenay* (1850) 13 Beav. 96, and this presumption must be rebutted by proof of the parent's other intention. *Dana* v. *Dana* (1891) 154 Mass. 491. By so doing in the principal case the plaintiff, it is submitted, proved his own fraud.

The rule that courts will not enforce illegal contracts has been subjected to some apparent modifications. The reason for the rule is obviously that a court cannot do anything inconsistent with its nature. So, whether the illegality be pleaded or not, it is the duty of the court to take cognizance of it. *Claflin* v. *U. S. Credit Co.* (1896) 165 Mass. 501; *Richardson* v. *Buhl* (1889) 77 Mich. 632, 651; *Wright* v. *Rindskopf* (1877) 43 Wis. 344. If before an illegal contract is executed one party seeks to recover money paid under it, he may do so. *Tappenden* v. *Randall* (1801) 2 Bos. & P. 467; Keener on Quasi Contracts 259. The courts are then preventing the performance of an illegality. So, though in the case of a fraudulent conveyance, equity ordinarily will enforce no agreement to reconvey, yet if the grantor repent and purge himself of his fraud by seeking a reconveyance in the interests of his creditors, the grantee only being then at fault, a recovery may be had upon the analogy of an unexecuted illegal contract. *Carll* v. *Emery* (1888) 148 Mass. 32. Likewise, the defense of illegality cannot be applied to a case where money earned under an illegal contract has come into the hands of a third person to pay over; *Tenant* v. *Elliott* (1797) 1 Bos. & P. 3; or to the enforcement of a bond given for past co-habitation, (though it may be if the bond be for the future) *Gray* v. *Mathias* (1800) 5 Vesey 286; or to a case of a partner recovering the proceeds of a illegal business from his co-partner. *Brooks* v. *Martin* (1863) 2 Wallace 70. To such cases as these the rule laid down in the principal case applies: the plaintiff may recover if he can prove a subsequent contract, express or implied, distinct from and without recourse to the previous illegal contract. But this rule, it is apparent, cannot apply to a fraudulent conveyance. The reconveyance is of the essence of the transaction; for equity to imply a resulting trust or enforce an agreement to reconvey would be to execute the illegality.

SHALL THE DOCTRINE OF ESTOPPEL IN PAIS APPLY IN CRIMINAL LAW?—In a recent case in Montana the defendant objected that the indictment under which he was arraigned had not been found by a grand jury legally constituted, since by the misfeasance of the defendant as county commissioner, the jury roll from which the grand jury had been drawn was wholly irregular. The court held that the defendant was estopped to deny the validity of the list and so set up his own wrong doing as a defense. *State* v. *Second Judicial Dist. Court* (1904) 78 Pac. 769.

The doctrine of estoppel in pais is equitable in its origin though for a long time it has been as fully available in law as in equity. *Freeman* v. *Cooke* (1848) 2 Ex. 653. An estoppel is defined as an agency of the law by which evidence to controvert the truth of certain admis-